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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,968	02/25/2004	Siegfried Foshag	HOE-804	5399
20028	7590	07/05/2006	EXAMINER	
Lipsitz & McAllister, LLC 755 MAIN STREET MONROE, CT 06468			LANDRUM, EDWARD F	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/788,968

Applicant(s)

FOSHAG, SIEGFRIED

Examiner

Edward F. Landrum

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/25/04, 5/16/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The abstract of the disclosure is objected to because the first two lines of the abstract do not correctly identify what the instant application is disclosing. Correction is required. See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 3, 4, 7, 8, 23, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Polkowski (U.S Patent No. 743,658).

Polkowski teaches (see Figures 1, 2, 4, and 5) shears formed of two parts (a and b) and both parts made of one piece. Both parts (a and b) also have handle portions (a2 and b2) as well as body portions (d). Both handle parts (a2 and b2) are disposed at an angle relative to the body portions (d). A rotary bearing (c2 and c3) provides for pivoting movement between the two parts (a and b). Metal cutting blades (e) are positively attached via screws (f) to the body portions (d) of both parts, and are spaced away from the rotary bearing and outside of the rotary bearing region.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3724

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 7, 8, and 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard (U.S Patent No. 4,333,235) in view of Willard (U.S Patent No. 5,168,629).

Regarding claim 1, Howard teaches (see Figures 1-5) shears comprising two handles and two heads. The first head (on member 12) is attached to the first handle (15). The second head (on member 11) is attached to the second handle (15). Both handles are disposed in an angular manner relative to the shear head, the shear head being composed of the first and second heads. A rotary bearing (13) is used to pivot member (11) with respect to member (12). The metal cutting blades (14) of each head are spaced away from the rotary bearing (13).

Regarding claims 7 and 8, Howard teaches (see Figure 1) each member (11 and 12) being formed of one piece.

Regarding claim 17, Howard teaches (see Figures 1 and 3) the first member (12) has an offset portion (20) to hold the second member (11) in a rotatable manner.

Regarding claims 18 and 19, Howard teaches (see Figure 1; also see Col. 2, lines 3-12) the recess (20) of the first member (12) being bounded by the first head on one side and the first handle part (15) on the other.

Regarding claim 21, Howard teaches (see Figure 1) the recess (20) being parallel to the axis of rotation.

Regarding claim 26, Howard teaches (see Figure 1) the head and handle (15) of the second member (11) are connected at right angles.

Howard teaches all of the elements of the current invention as stated above except the use of detachable blades, the blades being positively attached to the heads and positioned away from the rotary bearing, and the rotary bearing being an extension of the first cutting blade.

Willard teaches (see Figure 4) positively connecting metal cutting elements (52 and 86) via screws (54 and 88) to opposing cutting heads (50 and 84) for the purpose of avoiding inadvertent cuts and keeping the blades sterile (Col. 6, lines 16-26). The blades (52 and 86) are placed outside and away from the rotary bearing (90) that is located on a first member (70). Furthermore, a stop member (96) is used in combination with a slot (66) to prevent hyperextension of the blades beyond their desired open position.

It would have been obvious to have modified Howard to incorporate the teachings of Willard to provide detachable blades so the blades could be removed when the shears were not being used to thereby prevent any inadvertent injuries and also provide a bearing member attached to the first member. Attaching the rotary bearing to the first member would provide a constant surface for the second member to rotate about thereby eliminating the need to find a special pin, bolt, or screw to allow the second member to properly rotate on. Furthermore, it would have been obvious to have modified Howard to incorporate the teachings of Willard to provide a stop means to limit the how far the blades could open from each other. Doing so would prevent the two

head members from pivoting backwards and potentially hurt the user while also prevent the user from trying to cut objects that were too thick and could potentially damage or break the shear when force was applied.

The modified device of Howard meets the limitation of claim 20 except that it employs a post and slot rather than the end of a recess to prevent the blades from being pivoted too far apart. However, because these two elements were art-recognized equivalents at the time of the invention in those cutting applications, one of ordinary skill would have found it obvious to substitute the end of a recess for the post and slot of the modified device of Howard.

6. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Polkowski, or modified device of Howard, in view of Nishikawa (U.S Patent No. 4,250,620).

Polkowski teaches all of the elements of the current invention as stated above except both parts being made of plastic.

Howard teaches all of the elements of the current invention as stated above except the first and second members being made of plastic.

Nishikawa teaches (see Figure 4; also see Col. 1, lines 51-68) making the head and handle portions of a shear member out of plastic to reduce the weight of the shears as well as the manufacturing time and cost.

It would have been obvious to have modified Polkowski, or the modified device of Howard, to incorporate the teachings of Nishikawa to make the head and handles out of

plastic for the purpose of reducing the overall weight of the cutters as well as decrease the time and cost necessary to manufacturing the sheers.

7. Claims 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polkowski, or the modified device of Howard, in view of Rauh (U.S Patent No. 2,078,585).

Polkowski teaches all of the elements of the current invention as stated above except each blade having a corresponding guide surface spaced away from the rotary bearing, approximately parallel to the axis of rotation of the rotary bearing, and the blade projecting beyond the guide surface.

The modified device of Howard teaches all of the elements of the current invention as stated above except each blade having a corresponding guide surface spaced away from the rotary bearing, approximately parallel to the axis of rotation of the rotary bearing, and the blade projecting beyond the guide surface.

Rauh teaches (Col. 1, lines 28-55, Col. 2, lines 1-33; also see Figures 2-4) a guide surface for each blade (4 and 5). The guide surface for first blade (4) for is the lower surface up to the tip of the blade in Figure 4. The guide surface for the second blade (5) is the upper surface up to the tip of the blade in Figure 4. The guide surfaces extend along the cutting edges of their associated cutting blades and in a direction that is approximately parallel to the axis of rotation of the rotary bearing. Each guide surface also extends outwardly away from its associated blade, and due to the slight angle of the guide surface the cutting blades (lowest tip of member 4, and highest tip of member 5) project beyond the associated guiding surface.

It would have been obvious to have modified Polkowski, or the modified device of Howard, to incorporate the teachings of Rauh to provide guide surfaces with each blade for the purpose of effectively guiding cut material past the cutting tool for the purpose of avoiding injuries from the edges of the material as well as providing a smoother cut thereby increasing the quality of the scissors.

8. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polkowski, or the modified device of Howard, in view of Hamann (U.S Patent No. 434,595).

Polkowski teaches all of the elements of the current invention as stated above except the use of a compression spring disposed between the handle members of both parts, as well as a locking device to lock the body portions in a closed position.

Howard teaches all of the elements of the current invention as stated above except the use of a compression spring disposed between the first and second handles and a locking device to lock the head of the shears in a closed position.

Hamann teaches (see Figure 3) the use of a compression spring between first and second handle members for the purpose of forcing each handle member back to a ready position after a cutting operation is performed. Furthermore Hamann teaches the use of a locking mechanism to lock the shearing blades in a closed position.

It would have been obvious to have modified Polkowski, or the modified device of Howard, to incorporate the teachings of Hamann to provide a compression spring between the handle members for the purpose of resetting the shear into a cutting position without the user having to exert any energy, thereby preventing a user from

becoming fatigued as quickly, and provide a locking device to lock the blades in a closed position so as to prevent a user from inadvertently closing the shears on an extremity when not in use.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

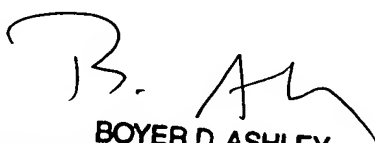
Gover (U.S Patent no. 3,143,799), Isaac (U.S Patent No. 1,594,671), Duffy (U.S Patent No. 3,678,580), Aiken (U.S Patent No. 4,462,157), Knight (U.S Patent No. 6,752,054), O'Keefe et al (U.S Patent No. 4,967,475), Heck et al (U.S Patent No. 6,625,888), Boyajian et al (U.S Patent No. 3,971,131), James (U.S Patent No. 2,310,959), Shaler (U.S Patent No. 2,682,108), Groom (U.S Patent No. 3,336,668), and Hammond (U.S Patent No. 838,504) teach shears pertinent to the instant application.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward F. Landrum whose telephone number is 571-272-5567. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EFL  
6/19/2006



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